

South Carolina General Assembly
118th Session, 2009-2010

A234, R250, S391

STATUS INFORMATION

General Bill

Sponsors: Senators Ryberg, McConnell, Verdin, Bryant, Cleary, Campsen, Shoopman, Campbell, Rose, Davis, Bright, S. Martin and Sheheen

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Companion/Similar bill(s): 1353

Introduced in the Senate on February 10, 2009

Introduced in the House on March 2, 2010

Last Amended on May 12, 2010

Passed by the General Assembly on May 20, 2010

Governor's Action: June 3, 2010, Signed

Summary: Department of Workforce

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/10/2009	Senate	Introduced and read first time SJ-3
2/10/2009	Senate	Referred to Committee on Labor, Commerce and Industry SJ-3
4/14/2009	Senate	Committee report: Majority favorable with amend., minority unfavorable Labor, Commerce and Industry SJ-31
1/20/2010	Senate	Minority Report Removed SJ-10
1/20/2010	Senate	Motion For Special Order Failed SJ-12
1/26/2010	Senate	Special order, set for January 26, 2010 SJ-16
2/10/2010	Senate	Committee Amendment Amended SJ-23
2/10/2010	Senate	Debate interrupted SJ-23
2/11/2010	Senate	Committee Amendment Amended and Adopted SJ-18
2/11/2010	Senate	Debate interrupted SJ-18
2/16/2010		Scrivener's error corrected
2/16/2010	Senate	Amended SJ-13
2/16/2010	Senate	Debate interrupted SJ-13
2/17/2010		Scrivener's error corrected
2/17/2010	Senate	Amended SJ-45
2/17/2010	Senate	Debate interrupted SJ-45
2/18/2010	Senate	Amended SJ-19
2/18/2010	Senate	Debate interrupted SJ-19
2/19/2010		Scrivener's error corrected
2/23/2010	Senate	Amended SJ-21
2/23/2010	Senate	Debate interrupted SJ-21
2/24/2010	Senate	Amended SJ-45
2/24/2010	Senate	Read second time SJ-45
2/25/2010	Senate	Amended SJ-69
2/25/2010	Senate	Read third time and sent to House SJ-69
3/2/2010	House	Introduced and read first time HJ-9
3/2/2010	House	Referred to Committee on Ways and Means HJ-11
3/10/2010	House	Recalled from Committee on Ways and Means HJ-75

3/11/2010	House	Debate adjourned until Monday, March 15, 2010 HJ -14
3/23/2010	House	Debate adjourned until Wednesday, March 24, 2010 HJ -48
3/24/2010	House	Debate adjourned until Tuesday, April 13, 2010 HJ -13
3/25/2010	House	Debate adjourned until Tuesday, March 30, 2010 HJ -32
4/13/2010	House	Debate adjourned HJ -46
4/14/2010	House	Recommitted to Committee on Ways and Means HJ -28
4/20/2010	House	Committee report: Favorable with amendment Ways and Means HJ -42
4/22/2010	House	Amended HJ -76
4/22/2010	House	Read second time HJ -76
4/22/2010	House	Unanimous consent for third reading on next legislative day HJ -80
4/23/2010	House	Read third time and returned to Senate with amendments HJ -3
5/12/2010	Senate	House amendment amended SJ -41
5/12/2010	Senate	Returned to House with amendments SJ -41
5/20/2010	House	Concurred in Senate amendment and enrolled HJ -50
5/20/2010	House	Roll call Yeas-96 Nays-1 HJ -50
6/1/2010		Ratified R 250
6/3/2010		Signed By Governor
6/21/2010		Effective date 01/01/11
6/23/2010		Act No. 234

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(A234, R250, S391)

AN ACT TO AMEND CHAPTER 31, TITLE 41, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTRIBUTIONS AND PAYMENTS TO THE UNEMPLOYMENT TRUST FUND, SO AS TO PROVIDE CERTAIN DEFINITIONS, TO CHANGE THE EMPLOYER'S MINIMUM BASE RATE, TO REVISE THE METHOD OF DETERMINING THE BASE RATE OF AN EMPLOYER ELIGIBLE FOR A RATE COMPUTATION, TO IMPOSE CERTAIN SURCHARGES ON EMPLOYERS TO PAY OUTSTANDING DEBT OF UNEMPLOYMENT INSURANCE TRUST FUND IN YEARS WHEN THE FUND IS INSOLVENT, TO DELETE LANGUAGE PROVIDING A STATEWIDE RESERVE RATIO, TO DELETE THE DEFINITION OF A NONPROFIT ORGANIZATION, TO MAKE CONFORMING CHANGES REFLECTING THE CREATION OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, AND TO CORRECT ARCANE LANGUAGE, AMONG OTHER THINGS; TO AMEND SECTION 41-27-310, RELATING TO THE DEFINITION OF THE TERM "INSURED WORKER", SO AS TO INCREASE THE THRESHOLD AMOUNT OF EARNINGS A PERSON MUST HAVE TO QUALIFY AS AN INSURED WORKER, AND TO PROVIDE THAT THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL FOUND QUALIFIED TO RECEIVE UNEMPLOYMENT BENEFITS PRIOR TO THE SECTION'S ENACTMENT; TO AMEND SECTION 41-27-380, AS AMENDED, RELATING TO THE DEFINITION OF THE TERM "WAGES", SO AS TO PROVIDE AN EXCEPTION TO THE TERM; TO AMEND SECTION 41-35-40, RELATING TO WEEKLY BENEFITS, SO AS TO INCREASE THE MINIMUM WEEKLY BENEFIT AMOUNT; BY ADDING SECTION 41-27-760 SO AS TO PROVIDE THESE CANDIDATES MAY NOT DIRECTLY OR INDIRECTLY SEEK THE PLEDGE OF A MEMBER OF THE GENERAL ASSEMBLY FOR THEIR ELECTION TO THE PANEL, AND

TO PROVIDE PENALTIES FOR A VIOLATION, AMONG OTHER THINGS; TO AMEND SECTION 41-29-40, AS AMENDED, RELATING TO UNEMPLOYMENT COMPENSATION AND EMPLOYMENT SERVICE DIVISIONS OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, SO AS TO DELETE LANGUAGE REQUIRING DIRECTORS APPOINTED TO THESE DIVISIONS MUST BE MADE ON A NONPARTISAN MERIT BASIS IN ACCORDANCE WITH CERTAIN STATUTORY PROVISIONS; BY ADDING SECTION 41-27-525 SO AS TO PROVIDE IF THE MAJORITY OF WEEKS IN A PERSON'S BASE PERIOD INCLUDES PART-TIME WORK, HE MAY NOT BE DENIED UNEMPLOYMENT BENEFITS UNDER A PROVISION RELATED TO AVAILABILITY OF WORK, ACTIVE SEARCH FOR WORK, OR FAILURE TO ACCEPT WORK SOLELY BECAUSE HE ONLY SEEKS PART-TIME WORK, AND TO DEFINE THE TERM "SEEKING ONLY PART-TIME WORK"; TO AMEND SECTION 41-27-150, AS AMENDED, RELATING TO THE DEFINITION OF THE TERM "BASE PERIOD", SO AS TO DEFINE THE TERM "ALTERNATE BASE PERIOD", AND TO PROVIDE WAGES THAT FALL WITHIN THE BASE PERIOD FOR A CLAIM ESTABLISHED UNDER THIS SECTION MUST NOT BE AVAILABLE FOR USE IN QUALIFYING FOR A SUBSEQUENT BENEFIT YEAR; TO AMEND SECTION 41-29-300, RELATING TO THE CREATION AND COMPOSITION OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, SO AS TO IMPOSE A MANDATORY RETIREMENT AGE ON MEMBERS OF THE APPELLATE PANEL; AND TO AMEND SECTION 41-35-125, AS AMENDED, SO AS TO PROVIDE CERTAIN DEFINITIONS, AND TO PROVIDE AN INDIVIDUAL IS ELIGIBLE FOR WAITING WEEK CREDIT AND UNEMPLOYMENT COMPENSATION IF THE DEPARTMENT FINDS HE WAS SEPARATED FROM EMPLOYMENT DUE TO COMPELLING FAMILY CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

Contributions and payments to the Unemployment Trust Fund

SECTION 1. Chapter 31, Title 41 of the 1976 Code is amended to read:

“CHAPTER 31

Contributions and Payments to the Unemployment Trust Fund

Article 1

Rates of Contributions

Section 41-31-5. As used in this chapter:

(1) ‘Benefit ratio’ means:

(a) for the period of January 1, 2011, through December 31, 2013, the number calculated by dividing the average of all benefits charged to an employer during the forty calendar quarters immediately preceding the calculation date by the employer’s average taxable payroll during the same period. If fewer than forty but more than four calendar quarters of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually on July first to the sixth decimal place;

(b) from January 1, 2014, the number calculated by dividing the average of all benefits charged to an employer during the twelve calendar quarters immediately preceding the calculation date by the employer’s average taxable payroll during the same period. If fewer than twelve but more than four calendar quarters of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually on July first to the sixth decimal place.

(2) ‘Department’ means the Department of Employment and Workforce.

(3) ‘Statewide average required rate’ means the amount of income projected to be needed by the unemployment insurance trust fund for the upcoming calendar year divided by the estimated taxable wages over the same period rounded to the sixth decimal place.

(4) ‘Statewide average interest surcharge’ means the amount of income projected to be needed to pay interest on outstanding federal advances during the upcoming calendar year divided by the estimated taxable wages for the upcoming calendar year.

Section 41-31-10. Each employer shall pay contributions equal to five and four-tenths percent of wages paid by him during each year except as may be otherwise provided in Chapters 27 through 41 of this title.

Section 41-31-20. (A) The department shall maintain a separate account for each employer and shall credit the account of each with all the contributions paid on his behalf, but nothing in Chapters 27 through 41 of this title shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amounts provided in Chapters 27 through 41 of this title, against the accounts of his most recent employer. No employer shall be deemed as the most recent employer for the purpose of this section unless the eligible person to whom benefits are paid earned wages in the employ of the employer equal to at least eight times the weekly benefit amount of the eligible claimant.

(B) Any two or more qualified employers in the same or a related trade, occupation, profession, or enterprise, or having a common financial interest may apply to the department to establish a joint account or to merge their several individual accounts in a joint account. The department shall promulgate regulations for the establishment, maintenance, and dissolution of joint accounts. A joint account shall be maintained as if it constituted a single employer's account.

(C) The department shall promulgate regulations concerning the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time. However, in the event benefits paid to an individual are based on wages paid by one or more employers who were liable for payments in lieu of contributions and on wages paid by one or more employers who were liable for payment of contributions, the amount in benefits charged to the account of the most recent employer shall not exceed the amount of benefits which would have been paid solely by reason of the base period wages paid by employers who were liable for payment of contributions.

(D) Nothing in this article shall be construed to limit benefits payable pursuant to Chapter 35 of this title.

Section 41-31-30. The department shall annually classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts to set contribution rates that reflect the employer's experience. The department shall determine the contribution rate of each employer in accordance with the requirements of Sections 41-31-20 to 41-31-70.

Section 41-31-40. Each employer's base rate for the twelve months commencing January first of any calendar year is determined in accordance with Section 41-31-50 on the basis of his record up to July first of the preceding calendar year, but no employer's base rate is less than the rate applicable for rate class thirteen until there have been twelve consecutive months of coverage after first becoming liable for contributions under Chapters 27 through 41 of this title. Each employer who completes twelve consecutive calendar months of coverage after first becoming liable for contributions during the current calendar year shall have a base rate computed on the basis of his record up through the next occurring June thirtieth, with that base rate being effective for the next calendar year beginning in January.

Section 41-31-45. (A) For the purposes of this section:

(1) 'Average high cost multiple' means the number of years the department could pay unemployment compensation, based upon the statewide reserve ratio, if the department paid the compensation at a rate equivalent to the average benefit cost rate in the three calendar years during the previous twenty calendar years, or the last three recessions, in which the benefit cost rates were the highest.

(2) 'Benefit cost rate' means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the State during that year. The calculation of the benefit cost rate may not include the wages and unemployment compensation paid by employers covered under Section 3309 of the Internal Revenue Code of 1986.

(3) 'Income needed to pay benefits' means the estimate of benefits payable in a given calendar year less the estimate of interest to be earned by the unemployment insurance trust fund for that calendar year.

(4) 'Statewide reserve ratio' means the ratio determined by dividing the balance in the trust fund reserve as of June thirtieth by the total covered wages for the previous twelve months in the State as of June thirtieth. The calculation of the statewide reserve ratio may not include the wages and unemployment compensation paid by employers covered under Section 3309 of the Internal Revenue Code of 1986.

(5) 'Fund adequacy target' means an average high-cost multiple of one.

(6) 'Trust fund reserve' excludes distributions from the federal government pursuant to 42 U.S.C. 1103, commonly referred to as the Reed Act.

(B) For each calendar year during the state Unemployment Insurance Trust Fund is in debt status, the department must estimate the

amount of income necessary to pay benefits for that year, the amount of income necessary to avoid automatic FUTA credit reductions, and an amount of income necessary to repay all outstanding federal loans within five years. Additional estimates of interest costs shall be determined concurrently.

(1) Estimates of the revenue needed to pay benefits will be based on Congressional Budget Office projections for the subsequent calendar year's total unemployment rate. This total unemployment rate will be adjusted for South Carolina based on the historic relationship between the unemployment rate in South Carolina and the national unemployment rate calculated from 1980 to present.

(2) The historic relationship, calculated from 1980 to present, between the total unemployment rate and the insured unemployment rate in South Carolina will be used to adjust the projected total unemployment rate to the rate of insured unemployment.

(3) Estimates of forecasted benefits be based upon the prior three year average of the annual number of weeks compensated multiplied by an estimate of the average weekly benefit for the next year.

(4) Estimates of amounts to pay to avoid FUTA credit reductions and amount of repayments on the loan will be projected through consultation with officials at the US Department of Labor.

(C) After the fund returns to solvency, the department must promulgate regulations concerning the income needed to pay benefits in each year and return the trust fund to an adequate level as defined in subsection (A)(5).

Section 41-31-50. Each employer eligible for a rate computation shall have his base rate determined in the following manner:

(1)(a)(i) Annually the department must calculate a contribution rate for each employer qualified for an experience rating. The contribution rate must correspond to rate calculated for the employer's benefit ratio class.

(ii) To determine an employer's benefit ratio rank, the department must list all employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio. The list must be divided into classes ranked one through twenty. Each class must contain approximately five percent of the total taxable wages, excluding reimbursable employment wage, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. Each employer must be placed in the class that corresponds with the employer's benefit ratio.

(iii) If an employer's taxable wages qualify the employer for two separate classes, the employer shall be afforded the class assigned

the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same class.

(b) The income needed to pay benefits for the calendar year plus any applicable income needed to reach the solvency target must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one-hundredth of one percent is the average required rate needed to pay benefits and achieve solvency targets.

(c) The rate for class twenty will be set such that the entire schedule raises the income required to pay benefits for the year, as well as the income necessary to move the trust fund toward the solvency target, subject to the structure provided in this chapter. However, the rate for class twenty must be at least five and four-tenths percent.

(2)(a) If the calculated rate necessary for benefit rate class twenty exceeds five and four-tenths percent, then the rate for each preceding benefit rate class shall be equal to ninety percent of the rate calculated for the succeeding class, except that rate class twelve shall be set at one-fourth the rate calculated for class twenty, provided that the rate for class one shall be zero.

(b)(i) If the computed rate necessary for class twenty is less than five and four-tenths percent, then the rate for class twenty shall be set at five and four-tenths percent.

(ii) The rate for rate class twelve shall be calculated by multiplying the average tax rate computed in subsection (1)(b) by twenty, subtracting five and four-tenths percent, and dividing by nineteen.

(iii) The contribution rate for rate classes eleven through one shall be equal to ninety percent of the rate for the succeeding class, provided that the rate for class one shall be zero.

(iv) The contribution rate for class thirteen shall be equal to one hundred twenty percent of the rate calculated for rate class twelve.

(v) The contribution rate for rate class nineteen shall be set at an amount that allows for average contributions, beginning with class eighteen and ending with class fourteen, that are equal to ninety percent of the preceding class.

Section 41-31-55. (A) In any calendar year in which the state Unemployment Insurance Trust Fund is insolvent, the State shall impose additional surcharges on all employers to pay interest on the outstanding debt. The estimated amount of interest to be paid in the upcoming year will be divided by the estimated taxable payroll for the calendar year. The result rounded to the next higher one hundredth of one percent is the statewide average surcharge.

(B) The rate for class twenty will be set so that the entire schedule raises the income required to pay interest surcharges for the year, subject to the structure defined in subsection (A). The rate for each preceding benefit rate class shall be equal to ninety percent of the rate calculated for the succeeding class, except that the rate class twelve shall be set at one fourth the rate calculated for rate class twenty.

Section 41-31-60. (A) If on the computation date upon which an employer's base rate is to be computed as provided in Section 41-31-40 there is a delinquent report, a base rate of two and sixty-four hundredths percent must be assigned for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty-four hundredths percent, the higher rate must be assigned until the next computation date.

(B) No employer is permitted to pay his unemployment compensation tax at a reduced base rate for any quarter when a tax execution issued in accordance with Section 41-31-390 with respect to delinquent unemployment compensation tax for a previous quarter is unpaid and outstanding against the employer. If on the computation date upon which an employer's base rate is computed as provided in Section 41-31-40 there is an outstanding tax execution, a base rate of two and sixty-four hundredths percent must be assigned for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty-four hundredths percent, the highest base rate must be assigned until the next computation date or until such time as any outstanding tax execution has been paid.

Section 41-31-70. If the department finds that an employer ceased to render employment solely due to the closing of the business because of the entrance of one or more of the owners, officers, partners, or the majority stockholders into the Armed Forces of the United States, or any of its allies, or of the United Nations after January 1, 1951, such employer's account shall not be terminated; and, if the business is resumed and employment rendered within two years after the discharge or release from active duty in the armed forces of the person or persons, the employer's experience shall be deemed to have been continuous throughout that period. The benefit ratio of the employer shall be the amount calculated pursuant to Section 41-31-5, including benefits paid to any individual during the period the employer was in the armed forces, divided by his average annual payroll for the most recent year during the whole of which the

employer has been in business and has rendered employment. This provision shall not be construed to authorize cash refunds and any adjustments required hereunder shall be only by credit certificate.

Section 41-31-90. In the event of a change of name by a corporation, without any change of ownership interest, the department may provide that the experience rating of the old corporation be continued by the new corporation.

Section 41-31-100. Any person or other legal entity who acquires by purchase, merger, consolidation, devise, inheritance or other means substantially all of the business of any employer and continues the acquired business, shall be deemed to be a successor to the predecessor from whom the business was acquired for the purpose of this article and, if not already an employer prior to the acquisition, shall become an employer on the date of the acquisition and shall succeed to the employment benefit experience record of the predecessor. The department shall prescribe by regulation the notice to be given of the acquisition. For the purposes of Chapters 27 through 41 of this title the term 'substantially all' means ninety-five percent or more of the business as determined by the department in a particular case.

Section 41-31-110. (A) Whenever any person or other legal entity has in any manner succeeded to or has acquired substantially all or a distinct and severable portion of the business of another, as provided in Sections 41-31-100 and 41-31-120, the base rates of contributions are computed as follows:

(1) If the successor is not already an employer at the time of the acquisition, the base rate of contributions applicable to the predecessor employer with respect to the period immediately preceding the date of acquisition, if there is only one predecessor employer, shall apply to the successor employer for the remainder of the calendar year.

(2) If the successor is not already an employer at the time of the acquisition and there is more than one transferring employer with a different base rate, the successor employer is assigned the base rate of that transferring employer who has the highest base rate.

(3) If the successor is already an employer at the time of the acquisition, the base rate of contributions applicable at the time of the acquisition to the successor employer shall continue to be the applicable base rate.

(B) For the purposes of items (1), (2), and (3) in subsection (A), the base rate as assigned continues in effect for the remainder of the calendar year and until the time the combined employment benefit

experience record meets the requirements as provided in Section 41-31-40.

Section 41-31-120. In the event that any person acquires by purchase, merger, consolidation, devise, inheritance or otherwise, a distinct, severable, identifiable and segregable part of the business of an employer and continues the acquired part of the business of the predecessor, the successor shall succeed to that portion of the employment benefit experience record of the predecessor which is attributable solely to the portion of the business which was acquired, except that a succession to the benefit experience attributable to an identifiable portion of the business of the predecessor shall not occur unless the successor is an employer at the time of the acquisition or becomes an employer within the quarter in which the succession occurs; provided, that no partial transfer of any employment benefit experience record shall be made unless a request is entered by both the predecessor and the successor employer. The department shall prescribe by regulation a period within which notification of the acquisition shall be given and the method by which the experience to be transferred shall be computed.

Section 41-31-125. (A) Notwithstanding the provisions of Sections 41-31-100 and 41-31-120, an employing unit must be assigned all or a portion of the employment benefit record of an existing employing unit when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion of an existing business enterprise, and there is a continuity of control of the business enterprise. The employing unit must be assigned the same rate as the predecessor, or the predecessor who has the highest base rate if there is more than one predecessor employing unit with different base rates.

(1) For purposes of this section control of the business enterprise may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, including workers, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(2) For purposes of this section continuity of control exists if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form or there is a transfer to persons within the

first degree of kinship to the transferors. Evidence of continuity of control includes, but is not limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship, partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

(B) An employing unit must not be assigned any portion of the employment benefit record of an existing employing unit upon the acquisition of that established business or of an identifiable and segregable part of that established business if:

(1) the acquiring person was not otherwise an employer at the time of the acquisition;

(2) the person has no substantial commonality of interest, including ownership or management, in the business acquired; and

(3) the department finds that the person acquired the business or an identifiable and segregable part of the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(C) If the experience rating account of the predecessor employer contains a debit balance, defined as an excess of total benefits charged over total contributions paid, the experience rating account of the predecessor employer must be transferred to the successor employer in accordance with the provisions of Section 41-31-140.

(D)(1) An employing unit that knowingly attempts to violate the provisions of this section must be assessed a penalty in an amount equal to the greater of one thousand dollars or ten percent of the tax determined by the department to be due for each report that is submitted in violation of this section. For the purposes of this section, the terms ‘knowingly’ or ‘knowing’ mean having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition in this section. This penalty may be recovered in the manner provided in Article 3 of this chapter for the collection of other penalties. Officers and directors of the enterprise comprising the employing unit are individually liable for the penalties assessed pursuant to this subsection.

(2) A contribution tax return preparer who violates this section or provides advice to an employing unit that results in a knowing violation of the provisions of this section is liable for a penalty of not less than one thousand dollars nor more than ten thousand dollars for each report

submitted in violation of this section. This penalty may be recovered by the department in an appropriate civil action in any court of competent jurisdiction.

(3) As used in this section, a 'contribution tax return preparer' is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any contribution and wage report or report of change in the status of an employing unit required by this chapter or any claim for credit for a tax imposed by this chapter. For purposes of this definition, the completion of a substantial portion of a report is treated as the preparation of the entire report. The term does not include a person merely because the person furnishes typing, reproducing, or other mechanical assistance, prepares a report of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, prepares as a fiduciary a report for any person, or represents a taxpayer in a hearing regarding an issue arising under this chapter.

(E) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

Section 41-31-130. Nothing in Sections 41-31-110 and 41-31-120 shall be construed to authorize or require the refund of any sums lawfully paid into the unemployment compensation trust fund or to authorize or require sums lawfully paid into the unemployment compensation trust fund for any purpose other than to pay unemployment compensation benefits. But the department may make the necessary adjustments in conformity with the provisions of this law by deductions of future contribution payments as though such payments or assessments had been made erroneously by any person coming within the provisions of said sections.

Section 41-31-140. (A) For the purposes of this section, 'debit balance' means the excess of total benefits charged over total contributions made.

(B) No transfer of experience rating accounts, in whole or in part, is permitted under the provisions of Sections 41-31-100 to 41-31-130 unless all unemployment compensation taxes based on wages paid by the transferring employer prior to the date of the transfer are paid by the transferring employer when due or assumed by the acquiring employer within sixty days from the date he is notified by the department that the transfer cannot be allowed because of unpaid unemployment compensation taxes. If the experience rating account of the predecessor employer contains a debit balance, the experience rating account of the predecessor employer in any event must be transferred to the successor

employer in accordance with the provisions of Sections 41-31-100 and 41-31-120.

Section 41-31-150. In the payment of any contributions or any departmental administrative contingency assessment a fractional part of a cent must be disregarded unless it amounts to one-half cent or more, in which case it must be increased by one cent.

Section 41-31-160. The department shall not require contribution and wage reports more frequently than quarterly. Effective with the quarter ending March 31, 2003, every employer with two hundred fifty or more employees and every individual or organization that, as an agent, reports wages on a total of two hundred fifty or more employees on behalf of one or more subject employers, and effective with the quarter ending March 31, 2005, every employer with one hundred or more employees and every individual or organization that, as an agent, reports wages on a total of one hundred or more employees on behalf of one or more subject employers, shall file that portion of the 'Employer Quarterly Contribution and Wage Reports' containing the employee's social security number, name, and total wages on magnetic tapes, diskettes, or electronically, in a format approved by the department. The department may waive the requirement to file using magnetic media if hardship is shown. In determining whether a hardship has been shown, the department shall take into account, among other relevant factors, the ability of the taxpayer to comply with the filing requirement at a reasonable cost.

Section 41-31-170. The department shall annually report to any employer the status of his account showing his total charges against it for benefits paid during the annual period and his benefit ratio as calculated pursuant to Section 41-31-5, as applicable. No employer may contest any charge against his account or the status of his account unless he makes protest within thirty days after such report has been mailed by the department.

Article 3

Payment and Collection of Contributions

Section 41-31-310. Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to Chapters 27 through 41 of this title with respect to wages for employment. Contributions shall become due and be paid by each

employer to the department for the fund in accordance with regulations promulgated by the department and shall not be deducted, in whole or in part, from the wages of the employer's employees. However, no determination and assessment of contributions, interest, or penalties shall be made, and no action for the collection of contributions, interest, and penalties shall be instituted more than four years after the last day of the month immediately following the calendar quarter for which the contributions, interest, or penalties were payable. This limitation period contained in this section does not apply to employers that willfully fail to timely file a contribution report with the department, that knowingly make false statements to the department in a contribution report, or that intentionally fail to disclose a material fact to the department concerning a contribution report.

Section 41-31-320. As soon as practicable after a contribution report is filed, the department shall examine it and compute the contribution due. If the amount computed is greater than the amount previously paid, the difference shall be paid to the department within ten days after notice of the amount is mailed by the department.

Section 41-31-330. (A) If the department finds that an additional contribution is due, that the report was made in good faith, that the understatement of the contribution is not deliberate, then no penalty shall be added because of the understatement. However, the amount of the deficiency shall bear interest at the rate of one percent for each month or fraction of a month that it remains unpaid.

(B) If the department finds that the understatement is due to negligence on the part of the employer, but without intent to defraud, there shall be added to the amount of the deficiency, in addition to interest calculated in the manner provided in subsection (A), a ten percent penalty.

(C) If the department finds that the understatement is false or fraudulent, with intent to evade the payment of the contribution due, there shall be added to the amount of the deficiency, in addition to interest calculated in the manner provided in subsection (A), a one hundred percent penalty.

Section 41-31-340. The department must give notice to an employing unit that has failed to make reports required pursuant to Chapters 27 through 41 of this title, or has filed incorrect or insufficient reports. If the employing unit refuses or neglects to file a proper report within fifteen days after notice has been mailed to it, the department shall determine the amount of the wages payable for employment by

the employing unit for the period for which the report is required. The determination must be based upon the department's best information and belief. The department must then determine the amount of contribution due, if any, computing it at double the rate which would otherwise apply. The department may allow further time, not to exceed an additional fifteen days, for filing the proper report after notice is mailed.

Section 41-31-350. An employer that fails to file a report concerning wages or contributions pursuant to Chapters 27 through 41 of this title within fifteen days from the date upon which the department mailed a demand for the report, the department shall assess the employer a penalty of ten percent of the contributions due but no less than twenty-five nor more than one thousand dollars in addition to the contributions payable with respect to the report.

Section 41-31-360. (A) If, not later than four years after the date on which any contributions or interest or employment security administrative contingency assessments became due, an employer who has paid the contributions or interest or employment security administrative contingency assessments shall make application for an adjustment in connection with subsequent contribution or employment security administrative contingency assessment payments or for a refund because the adjustment cannot be made and the department shall determine that the contributions or interest or employment security administrative contingency assessments or any portion was erroneously collected, the department shall make an adjustment, without interest, in connection with subsequent contribution or employment security administrative contingency assessment payments by him or, if the adjustment cannot be made, shall refund the amount from the fund. For like cause and within the same period an adjustment or refund may be made on the department's own initiative.

(B) A refund or adjustment must be made in any case where the department finds that contributions or interest or employment security administrative contingency assessments were erroneously paid by an employing unit to this State upon wages earned by individuals in employment in another state. The refund or adjustment must be made upon satisfactory proof to the department that the payment of the contributions or interest or employment security administrative contingency assessments have been made to the other state.

Section 41-31-370. (A) Contributions unpaid on the date on which they are due and payable, as prescribed by the department, shall

bear interest at the rate of one percent for each month or fraction for which they remain unpaid but contributions as have accrued prior to the establishment of an employer's liability shall bear interest at the rate of one-half of one percent a month or fraction of a month, to the date on which liability is established, unless it is found by the department that the delay in the establishment of liability resulted from wilful negligence of the employer, and shall bear interest at the rate of one percent a month or fraction for which they remain unpaid thereafter.

(B) If any employer's amount of contributions which are due and payable, as prescribed by the department, are unpaid ten days following the date on which an assessment or debit memorandum was issued, a penalty of ten percent of the amount of contributions due and payable, not to exceed one thousand dollars, must be paid in addition to any other interest or penalty which may be applicable.

(C) The department may, for good cause, extend the time for the filing of reports and the payment of contributions. Any person to whom the extension is granted shall pay in addition to the contribution due, interest at the rate of one percent per month or fraction of a month from the due date of the contribution to the date of payment.

Section 41-31-380. The contributions, interest, penalties, departmental administrative contingency assessments, and costs prescribed in this chapter are considered taxes owing the State by the persons against whom they are charged, and are a lien upon the real property or chattels of the person by whom the contributions are due, only after the warrant described in Section 41-31-390 is indexed as prescribed in Section 41-31-400.

Section 41-31-390. (A) If an employer defaults in any payment of contributions, interest, penalties, or departmental administrative contingency assessments, the department shall notify the employer of the amount of contributions, interest, penalties, or departmental administrative contingency assessments due. If the amount is not paid within ten days after notice to the employer, the department shall issue a warrant of execution, directed to its authorized representative, commanding the representative to levy upon and sell the real and personal property of the employer found within that county for the payment of the amount, with interest, the cost of executing the warrant, and any reasonable costs incurred in collecting these amounts, to return the warrant to the department and to pay it the money collected.

(B) The department may contract with a collection agency or the Department of Revenue for the purpose of collecting delinquent payments of contributions, interest, penalties, departmental

administrative contingency assessments, and any other reasonable costs authorized by subsection (A).

(C) The department shall promulgate regulations to carry out the provisions of this section.

Section 41-31-400. (A) The department, or its authorized representative, shall file a copy of the execution with the clerk of court of the county or counties of the State in which the employer does business. The clerk of court shall enter in his abstract of judgments the name of the employer identified in the warrant and in the proper columns the amount of the contributions, interest, penalties, and departmental administrative contingency assessments and costs for which the warrant is issued along with the date and hour when the copy is filed. The clerk of court also shall index the warrant upon the index of judgments. The department, or its authorized representative, shall proceed upon the warrant in all respects and with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and is entitled to the same fees for service in executing the warrant to be collected in the same manner.

(B) The powers now or hereafter conferred upon the Department of Revenue by Title 12 for the collection of unpaid income taxes are incorporated by reference and are conferred upon the department and its authorized representative for the collection of unpaid contributions, interest, penalties, and departmental administrative assessments and costs, *mutatis mutandis*.

(C) The department shall promulgate regulations to carry out the provisions of this section.

Section 41-31-410. Any clerk of court or register of deeds, as the case may be, or county treasurer shall be entitled to the fees provided in Section 14-19-100 for filing, enrolling, and satisfying a tax warrant or execution issued by the department.

Section 41-31-420. Subsequent to any distribution of an employer's assets pursuant to a court order, including any receivership, assignment for the benefits of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full on the same basis as all other tax claims but on a parity with claims for wages of not more than two hundred fifty dollars to each claimant earned within six months of the commencement of the proceeding. Subsequent to an employer's adjudication in bankruptcy or judicially confirmed extension proposal or composition under the

Federal Bankruptcy Act, contributions then or thereafter due shall be entitled to such priority as is provided in that act.

Article 5

Financing Benefits Paid to Employees of Nonprofit Organizations

Section 41-31-600. For the purposes of this article, 'nonprofit organization' means an organization, or group of organizations, described in Section 501(c)(3) of the United States Internal Revenue Code that is exempt from income taxes under Section 501(a) of that code.

Section 41-31-610. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this article.

Section 41-31-620. Any nonprofit organization which, pursuant to item (6) of Section 41-27-210, is, or becomes, subject to Chapters 27 through 41 of this title after December 31, 1971, shall pay contributions under provisions of Section 41-31-10 unless it elects, in accordance with this section, to pay the department for the unemployment fund an amount equal to the amount of regular benefits and one-half the extended benefits paid for any reason, including, but not limited to, payments made as a result of a determination, or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility or partial eligibility which is subsequently reversed for any reason, if the payments or any portion of the payments were made as a result of wages earned in the employ of the nonprofit organization. After January 1, 1979, the State or any political subdivision or any instrumentality of the political subdivision as defined in subitem (b) of item (2) of Section 41-27-230 is required to reimburse the amount of regular benefits and all extended benefits paid for any reason, including, but not limited to, payments made as a result of a determination, or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility or partial eligibility which is subsequently reversed for any reason, if the payments or any portion of the payments were made as a result of wages earned in its employ during the effective period of the elections.

(1) Any nonprofit organization which is, or becomes, subject to Chapters 27 through 41 of this title on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972, provided,

it files with the department a written notice of its election within the thirty-day period immediately following that date.

(2) Any nonprofit organization which becomes subject to Chapters 27 through 41 of this title after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which the subjectivity begins by filing a written notice of its election with the department not later than thirty days immediately following the date of the determination of the subjectivity.

(3) Any nonprofit organization which makes an election in accordance with item (1) or item (2) of this section will continue to be liable for payments in lieu of contributions until it files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is first effective.

(4) Any nonprofit organization which has been paying contributions under Chapters 27 through 41 of this title for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the department not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. The election is not terminable by the organization for that and the next calendar year.

(5) The department may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(6) The department, in accordance with the regulations as may be prescribed, shall notify each nonprofit organization of any determination made with respect to its status as an employer and of the effective date of any election which it makes and of any termination of the election. The determinations are subject to reconsideration, appeal, and review in accordance with the provisions of item (5) of Section 41-31-630.

Section 41-31-630. Payments in lieu of contributions shall be made in accordance with the provisions of subsections (1) and (2) of this section.

(1) At the end of each calendar quarter the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter, and effective January 1, 1979, with respect to the State or any political subdivision or any

instrumentality thereof as defined in Section 41-27-230(2)(b) the full amount of regular and extended benefits attributable to services performed in its employ.

(2) Each nonprofit organization that has elected payment of benefits in lieu of contributions shall further elect for the same period to make such payments in accordance with one of the following two methods:

(a) payment of any bill rendered under subsection (1) of this section in accordance with subsection (3) of this section; or

(b) payment of two percent of the quarterly taxable payroll of the nonprofit organization to the department within thirty days after the close of each such calendar quarter. The department shall apply such funds to the payment of bills rendered to the nonprofit organization under subsection (1) of this section. At the end of each calendar year, the department shall determine whether the total of payments for such year made by the nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such calendar year, and effective January 1, 1979, with respect to the State or any political subdivision or any instrumentality thereof as defined in Section 41-27-230(2)(b) the full amount of all regular and extended benefits paid to individuals during such calendar year based on wages attributable to service in its employment. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subsection (3) of this section. If the total payments exceed the amount so determined for the calendar year, all or a part of the excess may, at the discretion of the department, be refunded from the fund or retained in the fund as part of the payments which may be required for the next calendar year.

(3) Payment of any bill rendered under either subsection (2)(a) or subsection (2)(b) of this section shall be made not later than thirty days after such bill is mailed to the last known address of the nonprofit organization or is otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subsection (5) of this section.

(4) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(5) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination

by the department setting forth the grounds for the application. After affording the organization a reasonable opportunity for a fair hearing consonant with the provisions of Section 41-35-720, the department shall by its decision make findings of fact and conclusion of law and upon the basis thereof affirm, modify, or reverse its original ruling with respect to the amount originally specified in the bill. Within fifteen days after the date upon which the decision is issued the organization may procure judicial review of the decision by commencing an action in the court of common pleas in any county in which the organization has a place of business against the department for the review of its decision. In such action a petition, which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the department or upon a person as the department shall designate. With its answer the department shall certify and file with the court all evidence and a transcript of all testimony taken in the matter together with its findings of fact and decision therein. In any judicial proceeding under this section the decision of the court shall be based upon the evidence introduced and the testimony received at the hearing before the department. An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules. A petition for judicial review shall act as a supersedeas or stay of any action by the department directed toward the collection of the amount involved in the controversy or the imposition of any penalty or forfeiture by reason of the nonpayment thereof.

(6) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 41-31-370, apply to past due contributions.

(7) All of the provisions of Section 41-31-360, applicable to the adjustment or refund of contributions and interest paid or collected, and not inconsistent with the provisions of this section, shall be applicable to payments in lieu of contributions and interest erroneously paid by a nonprofit organization.

(8) All of the remedies, powers, and means available to the department under the provisions of Sections 41-31-380, 41-31-390, 41-31-400, 41-31-410, and 41-31-420 to enforce the payment of contributions, interest, penalties, and costs are applicable to the enforcement of payments in lieu of contributions and interest due under the provisions of this section, and for the purposes of this item the term 'contributions' which appears in any such sections means 'payment in lieu of contributions' in all particulars.

(9) In the event any governmental entity which is a covered employer under the terms of this chapter and Article 5, Chapter 35

becomes delinquent in payments due under this chapter and Article 5, Chapter 35, upon due notice, and upon certification of the delinquency by the department to the State Treasurer or any other department or agency of the State holding funds that may be payable to the delinquent governmental entity, the amount of such delinquency shall be deducted from any such funds in the hands of the State Treasurer or other department or agency and paid to the department in satisfaction of such delinquency. This remedy shall be in addition to any other collection remedies in this chapter and Article 5, Chapter 35 or otherwise provided by law.

Section 41-31-640. The department in its discretion may adopt regulations requiring any nonprofit organization or group of organizations described in Section 41-31-660(3) which does not possess title to real property and improvements valued in excess of two million dollars to post a surety bond, money deposit, securities, or other security as the department may require to insure the payments in lieu of the contributions required under such election.

(1) The amount of the surety bond, money deposit, securities, or other security required by this subsection shall bear such relationship as the department shall determine to the organization's total wages paid for employment as defined in Section 41-27-380 for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the surety bond, cash deposit, securities, or other security shall be as determined by the department.

(2) Any bond deposited under this subsection shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the department, at such times as the department may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date of notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in Section 41-31-630(6), shall render the surety liable on such bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money in accordance with this subsection shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under this subsection by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Section 41-31-630(6). The department shall require the organization within fifteen days following any deduction from a money deposit under the provisions of this subsection to deposit sufficient additional money to make whole the organization's deposit at the prior level. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make an additional deposit within fifteen days of written notice of its determination or shall return to the organization such portion of the deposit as it no longer considers necessary, whichever action is appropriate.

Section 41-31-650. If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the department may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than two calendar years beginning with the quarter in which such termination becomes effective; provided, that the department may extend for good cause the applicable filing, deposit, or adjustment period by not more than thirty days.

Section 41-31-660. Each employer that is liable for payment in lieu of contributions shall pay the department for the fund an amount equal to the amount of regular benefits and one-half the extended benefits paid that are attributable to service in the employ of such employer except that after January 1, 1979, the State or any political subdivision or any instrumentality thereof as defined in Section 41-27-230(2)(b) shall be required to reimburse the full amount of regular and extended benefits attributable to service in its employment. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subsection (1) or (2).

(1) If the benefits paid to an individual are based both on base period wages paid by one or more employers that are liable for contributions and on base period wages paid by one or more employers that are liable for payments in lieu of contributions, the amount payable by each employer that is liable for payments in lieu of contributions shall bear the same ratio to the sum of the amounts payable by such employers as the total base period wages paid to the individual by each employer that is liable for payments in lieu of contributions bear to the total base period wages paid to the individual by all such employers.

(2) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employer.

(3) Two or more employers that have been liable for payments in lieu of contributions, in accordance with the provisions of Section 41-31-620 may file a joint application to the department for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purpose of this section. Upon its approval of the application, the department shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two calendar years and thereafter until terminated at the discretion of the department or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The department shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from such accounts, and for the determination of the amounts that are payable

under this subsection by members of the group and the time and manner of such payments.

Section 41-31-670. (A) Any nonprofit organization that prior to January 1, 1969, paid contributions required by Section 41-31-10 and, pursuant to Section 41-31-620, elects within thirty days after January 1, 1972, to make payments in lieu of contributions, is not required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by the organization to individuals for weeks of unemployment which begin on or after the effective date of the election until the total amount of the benefits equals the amount of the positive balance in the experience rating account of the organization.

(B) Any nonprofit organization which has elected to become liable for payments in lieu of contributions under the provisions of Sections 41-31-620 and 41-31-630 and thereafter terminates the election shall become an employer liable for the payments of contributions upon the effective date of the termination but no such employer's base rate thereafter may be less than two and sixty-four hundredths percent until there have been twenty-four consecutive calendar months of coverage after so becoming liable for the payment of contributions. If the employer has been an employer liable for the payment of contributions prior to election to become liable for payments in lieu of contributions, the balance in the experience rating account of the employer as of the termination date of the election to become liable for payments in lieu of contributions is transferred to the new experience rating account then established for the employer.

Article 7

Financing Benefits Paid to Employees of Governmental Entities

Section 41-31-810. Benefits paid to employees of a governmental entity as provided for by Sections 41-27-210(5), 41-27-230(2), and 41-35-10, shall be financed to the same extent, in similar manner, and by like procedure as is set out in Article 5 of this chapter with respect to the financing of benefits paid to employees of nonprofit organizations, except that the provisions of Section 41-31-640 shall not be applicable thereto, and except that for the purposes of Section 41-31-670 no governmental entity as defined in Section 41-27-230(2) may use any credit balance in its experience rating account for payment, credit, set off, or reduction of reimbursement of any amount of regular or extended benefits attributable to service in its employment.

Section 41-31-820. (A) Unemployment compensation premiums collected from state agencies will be deposited into a separate account and used to pay unemployment compensation benefits to eligible employees of the State. Premiums will be based on experience ratings provided by private consultants and the State Budget and Control Board. The Unemployment Compensation Funds' contribution level must be reviewed no less than biennially to ensure that premiums are commensurate with the cost of operating the Unemployment Compensation Fund. All interest earned on this account must be retained by the Unemployment Compensation Fund and used to offset costs.

(B) Notwithstanding the amounts annually appropriated as 'Unemployment Compensation Insurance' to cover unemployment benefit claims paid to employees of the state government who are entitled under federal law, the State Treasurer and the Comptroller General, are hereby authorized and directed to pay from the general fund of the State to the department funds necessary to cover actual benefit claims paid during the current fiscal year which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions subject to unemployment compensation claims. The department must certify quarterly to the State Budget and Control Board the state's liability for such benefit claims actually paid to claimants who were employees of the State of South Carolina and entitled under federal law. The amount so certified must be remitted to the department.

Article 9

Payment and Collection of Departmental Administrative Contingency Assessments

Section 41-31-910. Departmental administrative contingency assessments must accrue and become payable by each employer who is subject to the assessments as defined in Section 41-27-410 for each calendar year in which he is subject to Chapters 27 through 41 of this title with respect to wages for employment. The assessments are due and payable by each subject employer to the department for the departmental administrative contingency fund and are not deductible, in whole or in part, from the wages of individuals in the employer's employ. No determination and assessments may be instituted more than four years after the last day of the month immediately following the calendar quarter for which the assessments were payable. The

limitation period contained in this section does not apply to an employer that wilfully fails to file a departmental contingency assessment report pursuant to this section or pursuant to regulations promulgated by the department, or has knowingly made a false statement or has intentionally failed to disclose a material fact on a departmental contingency assessment report.

Section 41-31-920. Departmental administrative contingency assessments must be reported on the employer's quarterly contribution report according to the same rules as the department may prescribe for contributions.

Section 41-31-930. If any employer's amount of the departmental administrative contingency assessment which is due and payable, as prescribed by the department, is unpaid ten days following the date on which an assessment or debit memorandum has been issued, a penalty of ten dollars may be assessed."

"Insured Worker" definition revised; application limited

SECTION 2. Section 41-27-310 of the 1976 Code is amended to read:

"Section 41-27-310. An 'insured worker' is an individual who has been paid wages in his base period for insured work equal to or exceeding one and one-half times the total of his wages paid in the quarter of such base period in which his wages for insured work were highest; provided, however, that no individual shall qualify as an insured worker unless he has been paid at least four thousand four hundred fifty-five dollars in his base period for insured work and one thousand ninety-two dollars in that quarter of his base period in which such wages were highest.

This section must not be applied to individuals who were found qualified to receive unemployment benefits prior to enactment of this section."

"Wages" definition revised

SECTION 3. Section 41-27-380(2) of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

"(2) For the purpose of Chapter 31, Article 1 of this title, 'wages' does not include that part of remuneration which, after remuneration equal to ten thousand dollars for the period of January 1, 2011, through

December 31, 2011, twelve thousand dollars for the period of January 1, 2012, through December 31, 2014, and fourteen thousand dollars from January 1, 2015, has been paid in a calendar year to an individual by an employer or his predecessor or with respect to employment during any calendar year, is paid to the individual by the employer during the calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, employment includes service constituting employment under any unemployment compensation law of another state.”

Weekly benefits; minimum increased

SECTION 4. Section 41-35-40 of the 1976 Code is amended to read:

“Section 41-35-40. An insured worker’s weekly benefit amount is fifty percent of his weekly average wage, as defined in Section 41-27-140, and the weekly benefit amount, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. However, no insured worker’s weekly benefit amount may be less than forty-two dollars nor greater than sixty-six and two-thirds percent of the statewide average weekly wage most recently computed before the beginning of the individual’s benefit year.”

Candidates for Department of Employment and Workforce Appellate Panel; support pledges limited; ramifications for violations

SECTION 5. Article 7, Chapter 27, Title 41 of the 1976 Code, as added by Act 146 of 2010, is amended by adding:

“Section 41-27-760. (A) No candidate for or person intending to become a candidate for the Department of Employment and Workforce Appellate Panel may seek, directly or indirectly, the pledge of a member of the General Assembly’s vote or contact, directly or indirectly, a member of the General Assembly or the review committee regarding screening for the Department of Employment and Workforce Appellate Panel, until the qualifications of all candidates for that office have been determined by the Department of Employment and Workforce Review Committee, and the review committee has formally released its report as to the qualifications of all candidates for the office to the General Assembly. For purposes of this section, ‘indirectly

seeking a pledge' means the candidate, or someone acting on behalf of or at the request of the candidate, requests a person to contact a member of the General Assembly on behalf of the candidate before the review committee has formally released its report as to the qualifications of all candidates to the General Assembly. The prohibitions of this section do not extend to an announcement of candidacy by the candidate or statement by the candidate detailing the candidate's qualifications.

(B)(1) No member of the General Assembly may pledge or offer his pledge for his vote for a candidate until the qualifications of all candidates for the Department of Employment and Workforce Appellate Panel have been determined by the Department of Employment and Workforce Review Committee, and the review committee has formally released its report as to the qualifications of all candidates to the General Assembly. The formal release of the report of qualifications must occur no earlier than forty-eight hours after the names of all candidates found qualified by the review committee have been initially released to members of the General Assembly.

(2) No member of the review committee may pledge or offer his pledge to find a candidate qualified prior to the review committee's determination of qualifications.

(C) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member's pledge to vote for a candidate for the Department of Employment and Workforce Appellate Panel.

(D)(1) Violations of this section may be considered by the Department of Employment and Workforce Review Committee when it considers the candidate's qualifications.

(2) Violations of this section by members of the General Assembly must be reported by the review committee to the House or Senate Ethics Committee, as may be applicable.

(3) Violations of this section by incumbent appellate panelists seeking reelection must be reported by the Department of Employment and Workforce and the Department of Employment and Workforce Appellate Panel to the State Ethics Commission. A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days, or both. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22-3-545."

**Unemployment Compensation and Employment Services
Divisions; appointment of directors not mandatorily bipartisan**

SECTION 6. Section 41-29-40 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

“Section 41-29-40. There are created under the department two coordinate divisions, the South Carolina State Employment Service Division, and a division to be known as the Unemployment Compensation Division. Each division must be administered by a full-time salaried director, who is subject to the supervision and direction of the department. The department may appoint, fix the compensation of, and prescribe the duties of the directors of these divisions. The director of each division shall be responsible to the department for the administration of his respective division and has the power and authority as vested in him by the department.”

**Availability of benefits for certain person seeking part-time work;
“seeking only part-time work” defined**

SECTION 7. Article 5, Chapter 27, Title 41 of the 1976 Code is amended by adding:

“Section 41-27-525. If the majority of the weeks of work in an individual’s base period includes part-time work, the individual shall not be denied unemployment benefits under any provisions of this act relating to availability for work, active search for work, or failure to accept work, solely because the individual is seeking only part-time work. The phrase ‘seeking only part-time work’, as used in this subsection, means the individual claiming unemployment benefits is available for a number of hours per week that are comparable to the individual’s part-time work experience in the base period.”

“Alternate base period” defined

SECTION 8. Section 41-27-150 of the 1976 Code, as last amended Act 146 of 2010, is further amended to read:

“Section 41-27-150. (A) Except as provided in subsection (B), ‘base period’ means the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year. However, in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the

department pursuant to the provisions of Section 41-29-140(2), the base period is that applicable provided by the law of the paying state.

(B)(1) 'Alternate base period' means for benefit years effective after May 31, 2010, if an individual does not have sufficient wages in the base period defined in subsection (A) to qualify for benefits, his base period must be the four calendar quarters completed most recently before the individual's benefit year if this period qualifies him for benefits, provided these quarters were not previously used to establish a prior valid benefit year.

(2) If the wage information for an individual's most recently completed calendar quarter is not available to the department from regular quarterly reports of systematically accessible wage information, the department promptly must contact the individual's employer to establish such wage information. The director shall establish rules necessary to implement this subsection.

(C) Wages that fall within the base period, if claims established under this section, must not be available for use in qualifying for a subsequent benefit year."

Department of Employment and Workforce Appellate Panel; mandatory retirement age

SECTION 9. Section 41-29-300 of the 1976 Code, as added by Act 146 of 2010, is amended by adding:

"(G) Notwithstanding another provision of law, it shall be mandatory for a member of the Department of Employment and Workforce Appellate Panel to retire not later than the end of the fiscal year in which he reaches his seventy-second birthday."

Waiting week credit and unemployment compensation; related terms defined; availability for compelling family circumstances

SECTION 10. Section 41-35-125 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

"Section 41-35-125. (A)(1) Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

(a) reasonably fears future domestic abuse at or en route to the workplace;

- (b) needs to relocate to avoid future domestic abuse; or
- (c) reasonably believes that leaving work is necessary for his safety or the safety of his family.

(2) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the department must require him to provide documentation of domestic abuse including, but not limited to, police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(3) Documentation or evidence of domestic abuse acquired by the department pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual.

(B)(1) For the purposes of this subsection:

(a) 'Immediate family member' means a claimant's spouse, parents, or minor children.

(b) 'Illness' means a verified disability that necessitates the care of the disabled person for a period of time that exceeds the amount of time the employer will provide paid or unpaid leave. Disability, includes, but is not limited to, mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.

(c) 'Compelling family circumstances' means:

(i) that a claimant was separated from employment with the employer because of the illness or disability of the claimant and, based upon available information, the department finds that it was medically necessary for the claimant to stop working or change occupations;

(ii) the claimant was separated from work due to the illness or disability of an immediate family member; and

(iii) the claimant's spouse was transferred or employed in another city or state, the family is required to move to the location of that job, the location is outside the commuting distance of the claimants previous employment, and the claimant separates from employment in order to move to the new location with his spouse.

(2) Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual was separated from employment due to compelling family circumstances."

Time effective

SECTION 11. This act takes effect January 1, 2011.

Ratified the 1st day of June, 2010.

Approved the 3rd day of June, 2010.
